TAI THONG FLOWER NURSERY SDN BHD A

v.

MASTER PYRODOR SDN BHD

COURT OF APPEAL, PUTRAJAYA B
ZAHARAH IBRAHIM JCA
ANANTHAM KASINATHER JCA
ABANG ISKANDAR JCA
[CIVIL APPEAL NO: A-02(NCVC)(W)-1395-06-2013]
2 OCTOBER 2014 C

LAND LAW: *Transfer - Estate land - Illegality of - Approval of Estate Land Board - Whether must be obtained before execution of agreement for transfer, conveyance or disposal of estate land - Whether transfer in contravention of s. 214A(1) National Land Code - Whether liable to be struck down as being void for illegality under s. 24 Contracts Act 1950 - Whether registration of title under void instrument excluded from indefeasibility protection - National Land Code, s. 340* D

LAND LAW: *Sale and purchase agreement - Estate land - Transfer of subdivision of estate land - Approval of Estate Land Board - Whether must be obtained before execution of agreement for transfer, conveyance or disposal of estate land - Whether transfer in contravention of s. 214A(1) National Land Code - Whether liable to be struck down as being void for illegality under s. 24 Contracts Act 1950 - Whether registration of title under void instrument excluded from indefeasibility protection - National Land Code, s. 340* E F

The plaintiff filed its writ of summons and statement of claim against the defendant, claiming that at all material times it was the sole registered owner of a parcel of land measuring 8.094 hectares or 20 acres ('the subject land'). The subject land was part of a parcel of land held under Geran 5668 ('the original land'), which was purchased by Cameron Fresh Farms Sdn Bhd ('Cameron Fresh'). The original land was supposed to be acquired by Malaysian Agri-Food Corporation ('MAFC') by way of a sale of shares in Cameron Fresh to MAFC by Fitters Sdn Bhd, which wholly owned the shares of Cameron Fresh. The plaintiff, Cameron Fresh and Fitters Sdn Bhd were part of a group of companies called Fitters Holdings Berhad ('the Fitters Group'). There were problems in the sale of the original land to MAFC due G H I

A to the presence of 'squatters' on a portion of the original land. To overcome these problems, the Fitters Group devised an arrangement by which a parcel of 20 acres, being the part which the 'squatters' were in occupation, would be excised from the original 502 acres and a subdivision applied for. The excised B portion would then be sold to the plaintiff. Cameron Fresh and the plaintiff entered into a sale and purchase agreement ('the SPA') and an application was made to the Estate Land Board for the subdivision of the original land. The plaintiff claimed that the defendant had unlawfully occupied the subject land and had built C permanent structures and fixtures on the land without the plaintiff's consent. The defendant denied being in unlawful occupation and claimed that the plaintiff had known all along that the defendant was in occupation of the subject land since 1 July 1973. The defendant also denied that the plaintiff was entitled to D vacant possession of the subject land. The trial judge held that the plaintiff's title was indefeasible and that the defendant did not adduce any evidence to challenge the plaintiff's title. The High Court thus allowed the plaintiff's claim for vacant possession. Aggrieved by the order of the High Court, the defendant E appealed. The defendant submitted that their challenge was not to the plaintiff's title to the subject land *per se* but to the plaintiff's *locus* to bring an action for trespass and vacant possession of the subject land. The defendant had also raised the issue of illegality in the transfer and registration of the subject land to the plaintiff, F the illegality being non compliance with s. 214A of the National Land Code ('NLC').

Held (allowing appeal; setting aside order of High Court)
Per Zaharah Ibrahim JCA delivering the judgment of the G **court:**

(1) The original land was held under one title before the subdivision. After the subdivision but before the registration of the transfer to the plaintiff, the subject land as well as the balance of the original land was still held by Cameron Fresh. H The two portions of land, namely, the balance of the original land as well as the subject land, were contiguous to each other. Therefore, despite the subdivision, the subject land was still part of an estate land. (para 34)

I

(2) The provisions of s. 214A of the NLC, as in force on the date of the SPA, clearly regulated not merely the transfer, but also the conveyance and disposal of any estate land. That conveyance or disposal must have the prior approval of the Estate Land Board. Subsection 214A(1) in no uncertain terms provided that estate land was not capable of being transferred, conveyed or disposed of 'in any manner whatsoever' unless the approval of the Estate Land Board had 'first' been obtained. (paras 50 & 51)

(3) The requirement that the approval of the Estate Land Board must be obtained before the execution of any agreement for the transfer, conveyance or disposal of estate land or any portion of it was reinforced by the provisions contained in para. 214A(10A)(b). The moment an agreement is executed without the approval of the Estate Land Board for the transfer, conveyance or disposal of estate land, such execution became conclusive proof that the transfer, conveyance or disposal was being done in contravention of the clear prohibition in s. 214A(1). (para 53)

(4) While s. 214A of the NLC did not itself provide that an agreement to transfer, convey or dispose of estate land without the approval of the Estate Land Board was void, the fact that such transfer, conveyance or disposal was prohibited by s. 214A(1), and the act of transferring, conveying or disposing constituted an offence under s. 214(10A)(a), meant that any contract for such transfer, conveyance or disposal, and consequently any Memorandum of Transfer pursuant to each contract, was liable to be struck down as being void for illegality under s. 24 Contracts Act 1950. (para 54)

(5) The registration of any title under a void instrument excludes such registration from the indefeasibility protection of s. 340 of the NLC. As the plaintiff's claim to the right of possession of the subject land was based on its claim to be the registered owner of the subject land, the evidence herein did not support that claim of that right. (paras 55 & 56)

[The documents in the appendices attached to the plaintiff's submissions showed that there was approval of the Estate Land Board for the subdivision of the original land, and alluded to there being in existence approval of the Estate Land Board for the transfer of the subject land.

Thus, this court ordered that the matter be remitted to the High Court for the plaintiff to adduce evidence of such approvals. The defendant in turn is granted liberty to elect afresh whether to adduce evidence.]

Bahasa Malaysia *Translation Of Headnotes*

Plaintif memfailkan writ saman dan penyataan tuntutan terhadap defendan, dengan dakwaan bahawa pada setiap waktu material ia adalah pemilik tunggal berdaftar sebidang tanah berukuran 8.094 hektar atau 20 ekar ('tanah tersebut'). Tanah tersebut adalah sebahagian tanah yang dipegang di bawah Geran 5668 ('tanah asal'), yang telah dibeli oleh Cameron Fresh Farms Sdn Bhd ('Cameron Fresh'). Tanah asal sepatutnya diperolehi oleh Malaysian Agri-Food Corporation ('MAFC') melalui jualan saham dalam Cameron Fresh kepada MAFC oleh Fitters Sdn Bhd, yang memiliki sepenuhnya saham dalam Cameron Fresh. Plaintif, Cameron Fresh dan Fitters Sdn Bhd adalah sebahagian daripada kumpulan syarikat yang dipanggil Fitters Holdings Berhad ('the Fitters Group'). Terdapat beberapa masalah dalam penjualan tanah asal kepada MAFC disebabkan kehadiran 'setinggan' di bahagian tanah asal. Untuk mengatasi masalah-masalah ini, Fitters Group mengaturkan supaya sebidang 20 ekar, iaitu sebahagian di mana 'setinggan' duduki, adalah dieksais daripada 502 ekar asal dan pecah sempadan telah dipohon. Bahagian yang telah dieksais kemudiannya dijual kepada plaintif. Cameron Fresh dan plaintif memasuki satu perjanjian jual beli ('PJB') dan satu permohonan dibuat kepada Lembaga Tanah Ladang untuk pecah sempadan tanah asal. Plaintif mendakwa bahawa defendan telah secara menyalahi undang-undang menduduki tanah tersebut dan telah membina struktur dan lekapan tetap atas tanah itu tanpa kebenaran plaintif. Defendan menafikan telah secara menyalahi undang-undang menduduki tanah tersebut dan mendakwa bahawa plaintif telah mengetahui sepanjang masa bahawa defendan menduduki tanah tersebut sejak 1 Julai 1973. Defendan juga menafikan bahawa plaintif berhak memperolehi milikan kosong tanah tersebut. Hakim bicara memutuskan bahawa hakmilik plaintif adalah tidak boleh disangkal dan defendan gagal mengemukakan keterangan bagi membantah hakmilik plaintif. Mahkamah Tinggi telah membenarkan tuntutan plaintif untuk milikan kosong. Tidak berpuas hati dengan perintah Mahkamah Tinggi tersebut, defendan merayu. Defendan berhujah bahawa bantahan mereka bukan

terhadap hakmilik plaintif ke atas tanah tersebut tetapi terhadap *locus* plaintif untuk membawa tindakan pencerobohan dan milikan kosong ke atas tanah tersebut. Defendan juga membangkitkan isu pemindahan dan pendaftaran tanah tersebut yang menyalahi undang-undang kepada plaintif, iaitu kepenyalahan undang-undang melalui ketidakpatuhan terhadap s. 214A Kanun Tanah Negara ('KTN').

Diputuskan (membenarkan rayuan; mengenepikan perintah Mahkamah Tinggi)
Oleh Zaharah Ibrahim HMR menyampaikan penghakiman mahkamah:

(1) Tanah asal dipegang di bawah satu hakmilik sebelum pecah sempadan. Selepas pecah sempadan tetapi sebelum pendaftaran pemindahan milik kepada plaintif, tanah tersebut dan juga baki tanah asal masih lagi dipegang oleh Cameron Fresh. Kedua-dua bahagian tanah, iaitu, baki tanah asal dan tanah tersebut, bersempadan. Oleh itu, walaupun terdapat pecah sempadan, tanah tersebut masih sebahagian tanah estet.

(2) Peruntukan s. 214A KTN sebagaimana yang berkuatkuasa pada tarikh SPA dengan jelasnya mengawal selia bukan sahaja perpindahan tetapi juga pemindahan hak dan pelupusan mana-mana tanah estet. Pemindahan hak dan pelupusan perlu mendapatkan kelulusan terlebih dahulu daripada Lembaga Tanah Ladang. Subseksyen 214A(1) dengan tegasnya memperuntukkan bahawa tanah estet tidak boleh dipindah, dipindahmilik atau dilupuskan 'dalam apa cara sekalipun' melainkan jika kelulusan Lembaga Tanah Ladang telah pertama sekali diperolehi.

(3) Keperluan bahawa kelulusan Lembaga Tanah Ladang harus diperolehi sebelum pelaksanaan apa-apa perjanjian untuk perpindahan, pemindahan hak atau pelupusan tanah estet atau mana-mana bahagian darinya telah diperkukuhkan oleh peruntukan yang terkandung dalam perenggan 214A(10A)(b). Sebaik sahaja perjanjian dilaksanakan tanpa kelulusan Lembaga Tanah Ladang untuk perpindahan, pemindahan hak atau pelupusan tanah estet, pelaksanaan itu menjadi keterangan muktamad bahawa perpindahan, pemindahan hak dan pelupusan telah dibuat bertentangan dengan larangan yang jelas terdapat dalam s. 214A(1).

(4) Walaupun s. 214A KTN tidak dengan secara sendirinya memperuntukkan bahawa perjanjian untuk perpindahan, pemindahan hak atau melupuskan tanah estet tanpa kelulusan Lembaga Tanah Estet adalah tidak sah, fakta bahawa perpindahan, pemindahan hak dan pelupusan telah dilarang oleh s. 214A(1), dan tindakan perpindahan, memindahkan milik dan melupuskan tersebut adalah satu kesalahan di bawah s. 214(10A)(a), bermakna bahawa apa-apa kontrak untuk perpindahan, pemindahan milik dan pelupusan, serta mana-mana memorandum pemindahan menurut setiap kontrak, adalah terbatal kerana tidak sah di bawah s. 24 Akta Kontrak 1950.

(5) Pendaftaran hakmilik yang dilakukan dengan cara yang tidak sah mengecualikan pendaftaran sedemikian dari perlindungan tidak boleh disangkal s. 340 KTN. Oleh kerana tuntutan plaintif ke atas hak pemilikan tanah tersebut adalah berdasarkan dakwaannya bahawa ia adalah pemilik berdaftar tanah tersebut, keterangan yang dikemukakan tidak menyokong tuntutan hak tersebut.

[Dokumen dalam lampiran yang disertakan pada hujahan plaintif menunjukkan bahawa terdapat kelulusan Lembaga Tanah Ladang bagi pecah sempadan tanah asal, dan menyentuh kepada terdapatnya kewujudan kelulusan oleh Lembaga Tanah Ladang untuk perpindahan tanah tersebut. Oleh itu, mahkamah memerintahkan supaya halperkara itu diremitkan kepada Mahkamah Tinggi untuk plaintif mengemukakan keterangan berkenaan kelulusan-kelulusan itu. Defendan pula diberikan kebenaran kebebasan memfailkan semula sama ada untuk mengemukakan keterangan.]

Case(s) referred to:

Hizran Enterprise & Anor v. Kumpulan Sua Betong Sdn Bhd [1994] 3 CLJ 622 HC ***(refd)***

Rengamah Rengasamy v. Tai Yoke Lai & Anor [1998] 1 CLJ 987 HC ***(refd)***

Vellasamy Pennusamy & Ors v. Gurbachan Singh Bagawan Singh & Ors [2012] 2 CLJ 712 CA ***(refd)***

Legislation referred to:

Contracts Act 1950, s. 24

National Land Code, ss. 340, 214A(1), (10A)(a), (b)

For the appellant - Gopal Sri Ram (Chan Kok Keong, Cheang Lek Choy & Ranjan Chandran with him); M/s Chan & Assocs
For the respondent - Rajinder Singh Veriah (Rheena Kaur Veriah with him); M/s Rajinder Singh Veriah & Co

[Editor's note: For the High Court judgment, Master Pyrodor Sdn Bhd v. Tai Thong Flower Nursery Sdn Bhd [2013] 10 CLJ 467.]

Reported by Suhainah Wahiduddin

JUDGMENT

Zaharah Ibrahim JCA:

Appeal

[1] This appeal was filed by the appellant/defendant who was aggrieved by the order of the High Court allowing the respondent/plaintiff's claim for vacant possession of a piece of land in Mukim Ulu Telom, Daerah Cameron Highlands, Negeri Pahang, of which the respondent/plaintiff claimed to be the registered owner; and allowing the respondent/plaintiff's claim for general damages and exemplary damages to be assessed by the registrar.

[2] For ease of reference, the parties to this appeal will be referred to in this judgement as they were in the High Court.

The Plaintiff's Claim

[3] The plaintiff filed its writ of summons and statement of claim on 6 January 2011 against the defendant.

[4] According to the plaintiff's statement of claim, it was at all material times the sole registered owner of a parcel of land measuring approximately 8.094 hectares or 20 acres (the 'subject land') held under HS(D) 3805 PT 2279, Mukim Ulu Telom, District of Cameron Highlands, Pahang.

[5] The plaintiff claimed that the defendant had unlawfully occupied the subject land and had built permanent structures and fixtures on the land without the plaintiff's consent.

[6] The plaintiff claimed to have served a notice on the defendant and other occupants of the subject land demanding that they quit and deliver up vacant possession of the subject land but the notice was ignored.

[7] The plaintiff claimed to have then made a formal demand for vacant possession by way of a notice of demand issued by its solicitors. The defendant still did not vacate the subject land.

[8] The plaintiff claimed that the defendant intentionally continued to trespass upon the subject land knowing that the income the defendant would make from its occupation of the subject land would exceed any amount it might be liable to pay to the plaintiff. Hence the plaintiff's claim for exemplary damages.

The Defendant's Defence

[9] The defendant in its defence denied being in unlawful occupation. It claimed that it had been in occupation of part of the subject land since 1 July 1973. It was allowed into occupation by one Ong Eng Chin. The defendant claimed that the plaintiff knew all along that the defendant was in occupation of the subject land.

[10] The defendant also denied that the plaintiff was entitled to vacant possession of the subject land.

The Trial

[11] The case proceeded to full trial which took place on 22 April 2013.

[12] The plaintiff adduced oral evidence through PW1, who was a director of the plaintiff. PW1 was the plaintiff's sole witness.

[13] After the plaintiff closed its case, the defendant submitted that there was no case to answer.

[14] The defendant in its cross-examination of PW1 and in its submissions, raised the issue of illegality in the transfer and registration of the subject land to the plaintiff, the illegality being non-compliance with s. 214A of the National Land Code ("NLC").

[15] The defendant's submission on such illegality was strenuously objected to by the plaintiff on the ground that it was not pleaded.

The High Court Decision

[16] The learned Judicial Commissioner (the 'trial judge') held that the plaintiff was claiming possession by virtue of being the registered owner of the subject land including the portion occupied

by the defendant. The legal fact of the plaintiff being the registered owner, according to the learned trial judge, could not be disputed as it was clear from the issue document of title produced in evidence as exh. P1.

[17] The learned trial judge also held that the plaintiff's title was indefeasible and there was no challenge to the indefeasibility in the pleadings. The burden of proving the illegality or that the plaintiff's title was indefeasible was on the defendant, and since the defendant chose not to adduce any evidence and did not file a counterclaim to challenge the plaintiff's title, the defendant had failed to challenge the indefeasibility of the plaintiff's title.

The Appeal

[18] Before us the defendant submitted that their challenge was not to the plaintiff's title to the subject land *per se* but to the plaintiff's *locus* to bring an action for trespass and vacant possession of the subject land.

[19] The defendant contended that the plaintiff did not have the necessary *locus* to bring an action for trespass or for vacant possession as its right to possession of the subject land had been challenged during the cross-examination of PW1. Once challenged, it was incumbent upon the plaintiff, not the defendant, to prove that it had the right to possession of the subject land; and that would mean proving that the title it had was not void for contravention of s. 214A of the NLC.

[20] The defendant submitted that the issue of contravention of s. 214A of the NLC was only raised during the trial but not pleaded.

Analysis

The Facts

[21] We noted that in the statement of claim the plaintiff had pleaded that it was the registered owner of that parcel of land held under HS(D) 3805 PT 2279, Mukim Ulu Telom, District of Cameron Highlands, Pahang. The title adduced in evidence was for land registered in the plaintiff's name under GRN 34685 on 27 October 2011. However, the title tendered in evidence showed that this is the final title which replaced HS (D) 3805.

[22] The subject land was part of a parcel of land measuring 203.3542 hectares (approximately 502 acres) held under Geran 5668 (the 'original land').

[23] The original land was purchased by Cameron Fresh Farms Sdn Bhd ('Cameron Fresh') from a company called Permata Warna Sdn Bhd in 2006.

[24] Cameron Fresh applied for, and was granted approval, for the transfer of the original land from Permata Warna Sdn Bhd by the Estate Land Board as evidenced by the letter dated 17 April 2006 from the office of the Director of Land and Mines, Pahang. This document was only produced before us as an appendix to the written submissions of the respondent.

[25] The original land was supposed to be acquired by Malaysian Agri-Food Corporation ('MAFC'), a company under Khazanah, by way of a sale of the shares in Cameron Fresh to MAFC by Fitters Sdn Bhd which wholly owned the shares of Cameron Fresh.

[26] From the evidence of PW1, particularly during cross-examination, it appeared that the plaintiff, Cameron Fresh and Fitters Sdn Bhd were part of a group of companies called Fitters Holdings Berhad (the 'Fitters Group').

[27] There were problems in the sale of the original land to MAFC due to the presence of 'squatters' on a portion of the original land. To overcome these problems, the Fitters Group devised an arrangement by which a parcel of 20 acres, being the part which the 'squatters' were in occupation, would be excised from the original 502 acres and a subdivision applied for. The excised portion would then be sold to the plaintiff with the purchase price being set off from advances given to the plaintiff by companies in the Fitters Group.

[28] Cameron Fresh and the plaintiff then entered into a sale and purchase agreement dated 26 February 2007 (the 'SPA') for the sale of the 20 acres (the 'subject land') out of the 502 acres comprised in the original land. At that point of time the subdivision had not taken place. In other words, as at the date of the SPA the subject land did not yet exist as a separate lot under a separate title.

[29] It was clear therefore that while the transfer of the original land to MAFC was to be by way of the sale of shares, the subdivision of the original land and the eventual registration of the subject land in the name of the plaintiff was not such a sale. It was in fact a transfer of part of the original land, that part having been demarcated on the plan attached to the SPA.

[30] There was then an application made to the Estate Land Board for the subdivision of the original land.

[31] Approval was granted by the Estate Land Board for the subdivision of the original land as shown by the letter dated 23 December 2008. This letter too was only produced before us in an appendix to the respondent's submissions.

[32] PW1 was unsure about the need to obtain the approval of the Estate Land Board under s. 214A of the NLC, and was even more unsure if that approval was in fact obtained, for the transfer of the subject land to the plaintiff after the subdivision.

The Law

Section 214A Of The NLC

[33] The relevant provisions of s. 214A of the NLC are reproduced below:

> 214A.(1) Notwithstanding anything contained in this Act, no estate land **is capable of being** transferred, conveyed, or disposed of **in any manner whatsoever** unless approval of such transfer, conveyance or disposal has **first** been obtained from the Estate Land Board (hereinafter referred to as "the Board") established under subsection (3).
>
> (2) The Registrar shall not register any instrument of transfer of such land under Part Eighteen of this Act unless such instrument is accompanied by a certificate of approval granted by the Board.
>
> (4) The proprietor or any co-proprietor of any estate land **desiring to** transfer, convey or dispose of in any manner whatsoever such land shall, together with the person or persons to whom the land is **to be** transferred, conveyed or disposed of, jointly submit an application to the Secretary of the Board in Form 14D.
>
> (10A)(a) Any person who transfers, conveys or disposes of or attempts to transfer, convey or dispose of in any manner whatsoever, any estate land in contravention of **subsection (1)** shall be guilty of an offence and shall on

A conviction be liable to imprisonment for a term of not less than one year and not more than three years and to a fine not exceeding then thousand ringgit.

(b) For the purposes of **this section, the execution of an agreement to** convey or dispose of the whole of an
B estate to two or more persons, *or to convey or dispose of any portion or portions of an estate land to one or more persons*, without the approval of the Board shall be conclusive proof that the estate land is conveyed or disposed of in contravention of subsection (1); and any
C act to demarcate an estate land or to cause or permit the demarcation of an estate land otherwise than in accordance with the provisions of this Act shall be *prima facie* proof that the person so acting, causing or permitting attempts to transfer, convey or dispose of the estate land in contravention of subsection (1).

D (11) For the purpose of **this Act**, "estate land" means any agricultural land held under one or more than one title the area or the aggregate area of which is not less than 40 hectares and the **alienated lands** constituting such area are contiguous.

E (12) For the purpose of this Act, alienated lands held under final title or qualified title or a combination thereof, shall be taken to be contiguous notwithstanding that they are separated from each other only by such land as is used, requires or reserved for roads, railways or waterways.

F (emphasis added)

[34] The original land was held under one title before the subdivision. After the subdivision but before the registration of the transfer to the plaintiff, the subject land as well as the balance of the original land were still held by Cameron Fresh. The two
G portions of land, namely the balance of the original land as well as the subject land, were contiguous to each other. Therefore, despite the subdivision, the subject land was still part of an estate land.

H Case Authorities

[35] The learned trial judge chose to follow the High Court approach in *Hizran Enterprise & Anor v. Kumpulan Sua Betong Sdn Bhd* [1994] 3 CLJ 622 (the '*Sua Betong* case') in which the High
I Court held that as the land had already been subdivided the Estate Land Board was deemed to have given its approval for the sale of the land in that case.

[36] From our reading of the Supreme Court decision in the *Sua Betong* case when it went on appeal, the High Court approach did not find favour with the Supreme Court.

[37] The Supreme Court's approach in the *Sua Betong* case was that the approval of the Estate Land Board was required when estate land was being transferred, conveyed or disposed of in any manner. However, in that case it was held by the Supreme Court that the approval of the Estate Land Board was not necessary as the transfer in question was to one person, not to two or more persons.

[38] The Supreme Court in the *Sua Betong* case also held that the provisions in para. 214A(10A)(b) of the NLC applied only in relation to sub-s. 214A(10A), namely to the prosecution of offences under para. 214A(10A)(a) because of the word "sub-section" in para. 214A(10A)(b).

[39] Section 214A of the NLC had, since the Supreme Court's decision in the *Sua Betong* case, been amended such that the words "to two or more persons" in sub-s. (1) had been deleted. The amendment was made by the National Land Code (Amendment) Act 2001 (Act A1104) which came into force on 1 December 2001.

[40] The effect of the amendment was to make any transfer to any person, even to one person, subject to the requirement of the prior approval of the Estate Land Board, the contravention of which would be an offence under sub-s. 214A(10A).

[41] Act A1104 also substituted for the word "sub-section" in para. 214A(10A)(b) the word "section". With this amendment, the provisions in that paragraph not only would apply in proving an offence under para. 214A(10A)(a), but also to any transfer, conveyance or disposal under s. 214A.

[42] Act A1104 further replaced the word "section" in sub-s. 214A(11) with the word "Act". This would mean that the definition of "estate land" in that sub-section would apply throughout the NLC.

[43] The majority judgment of the Court of Appeal in *Vellasamy Pennusamy & Ors v. Gurbachan Singh Bagawan Singh & Ors* [2012] 2 CLJ 712 opined that s. 214A did not prohibit the making of

A contractual agreements for the sale of estate land. The majority judgment cited with approval the High Court case of *Rengamah Rengasamy v. Tai Yoke Lai & Anor* [1998] 1 CLJ 987. The same High Court case was also relied upon by the trial judge in the case before us.

B

[44] We noted that the majority judgment in *Vellasamy* did not deal with the clear words of para. 214A(10A)(b). At the time *Rengamah* was decided in 1997, that paragraph was not yet amended.

C

[45] Further, neither the majority judgment in *Vellasamy* nor the High Court in *Rengamah* dealt with effect of the words "desiring to" and "to be" contained in sub-s. 214A(4).

Decision

D

[46] We were in full agreement with the learned trial judge that he who asserts must prove.

[47] In this case, it was the plaintiff who claimed not only for vacant possession of the subject land but also for general and E exemplary damages for having been kept out of the subject land. That claim was founded on the plaintiff's claim that it was lawfully entitled to possession of the subject land by being the registered proprietor of the subject land.

F **[48]** In our considered view, the burden was on the plaintiff to prove that it was the lawful registered owner of the subject land.

[49] When the illegality of the plaintiff's registration as proprietor of the subject land for contravention of s. 214A of the NLC was G raised, the burden, in our view, was still on the plaintiff to prove that there was no such illegality and that the necessary approval under that section had been obtained.

[50] The provisions of s. 214A of the NLC as in force on the date of the SPA clearly regulated not merely the transfer, but also H the conveyance and disposal of any estate land. That conveyance or disposal must have the prior approval of the Estate Land Board.

[51] Sub-section 214A(1) in no uncertain terms provided that I estate land was not capable of being transferred, conveyed or disposed of "in any manner whatsoever" unless the approval of the Estate land Board had "first" been obtained.

[52] The presence of the words "**desiring to** transfer, convey or dispose of in any manner whatsoever such land" and the words "to whom the land is **to be** transferred, conveyed or disposed of" (emphasis added) in sub-s. 214A(4) clearly meant that the obtaining of the approval must be done before the execution of the agreement by which the land would be conveyed or disposed of.

[53] The requirement that the approval of the Estate Land Board must be obtained before the execution of any agreement for the transfer, conveyance or disposal of estate land or any portion of it was reinforced by the provisions contained in para. 214A(10A)(b). The moment an agreement is executed without the approval of the Estate Land Board for the transfer, conveyance or disposal of estate land, such execution became conclusive proof that the transfer, conveyance of disposal was being done in contravention of the clear prohibition in sub-s. 214A(1).

[54] While s. 214A of the NLC did not itself provide that an agreement to transfer, convey or dispose of estate land without the approval of the Estate Land Board was void, the fact that such transfer, conveyance or disposal was prohibited by sub-s. 214A(1), and the act of transferring, conveying or disposing constituted an offence under sub-s. 214A(10A)(a), meant that any contract for such transfer, conveyance or disposal, and consequently any memorandum of transfer pursuant to such contract, was liable to be struck down as being void for illegality under s. 24 of the Contracts Act 1950.

[55] The registration of any title under a void instrument excludes such registration from the indefeasibility protection of s. 340 of the NLC.

[56] As the plaintiff's claim to the right of possession of the subject land was based on its claim to be the registered owner of the subject land, we were of the considered view that the evidence before us and the High Court did not support that claim of that right.

[57] We therefore allowed the appeal and set aside the orders of the High Court.

[58] However, the documents in the appendices attached to the plaintiff's submissions showed that there was approval of the Estate Land Board for the subdivision of the original land, and alluded to there being in existence approval of the Estate Land Board for the transfer of the subject land.

[59] In those circumstances, we ordered that the matter be remitted to the High Court for the plaintiff to adduce the evidence of such approvals. The defendant in turn was granted liberty to elect afresh whether to adduce evidence. We ordered costs to follow the event in the High Court.